

Decision **DRAFT DECISION OF ALJ REED** (Mailed 7/19/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion into Monitoring
Performance of Operations Support Systems.

Rulemaking 97-10-016
(Filed October 9, 1997)

Order Instituting Investigation on the
Commission's On Motion into Monitoring
Performance of Operations Support Systems.

Investigation 97-10-017
(Filed October 9, 1997)

**OPINION MODIFYING DECISION 01-05-087 TO CONVERT xDSL OSS
PERFORMANCE MEASURE STANDARDS FOR THE PERFORMANCE
INCENTIVE PLAN FOR PACIFIC BELL TELEPHONE COMPANY**

Summary

On the Commission's own motion, by this decision we convert non-working parity standards for a few Digital Subscriber Line (DSL) performance sub-measures used in the Commission's Performance Incentives Plan (PIP). To make these standards workable, we convert these standards either to absolute "benchmarks" or to different parity comparisons. Parity standards compare an incumbent local exchange company's (ILEC) operations support system (OSS) performance on behalf of competitive local exchange carrier (CLEC) customers to the ILEC's performance for its own customers. In the case of the sub-measures we convert today, Pacific Bell Telephone Company (Pacific) does not offer these same DSL services to its own customers and, as a consequence, without the comparison, the current parity standards do not work as intended. Either by

establishing a benchmark or by selecting a different retail analog, comparisons will be possible. We convert to benchmarks the parity sub-measures for *2-wire digital loop - xDSL capable* (“*xDSL loop*”) service group types in Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, and 19, and establish a workable retail analog for this service type for Performance Measures 20, 21, and 23.

Background

The Commission established performance measures to monitor and enforce ILEC OSS performance to CLEC customers. Good OSS performance is essential to establishing local exchange competition. A parity measure compares the OSS performance that Pacific provides its own customers with the performance it provides CLEC customers. If performance to CLEC customers is worse than it is to Pacific’s customers, it could be difficult for the CLECs to stay competitive. The Commission’s PIP measures performance, assesses those results, and requires Pacific to disburse billing credits to the CLECs and the ratepayers in the event of deficient performance.

In 1999, the Commission adopted the first set of OSS performance measures and standards by approving a joint partial settlement agreement (“*JPSA*”) between the parties to this proceeding.¹ However, the parties established a standard for the *xDSL loop* service-type envisioning a retail offering by Pacific that never materialized. Consequently, OSS performance for *xDSL loop* OSS services has not been evaluated in the PIP monitoring and enforcement mechanisms.

¹ The Joint Partial Settlement Agreement regarding Performance Measurements (“*JPSA*”), was originally approved by the Commission in Decision (D.) 99-08-020 (August 5, 1999) and later modified in D.01-05-087 (May 24, 2001).

On May 31, 2002, Pacific filed an advice letter seeking Commission approval of an amendment to its interconnection agreement with AT&T Communications of California (AT&T). The amendment would convert the *xDSL loop* sub-measure standards as described, *infra*, and represents an agreement between Pacific and AT&T on converting these sub-measures.

Negotiations have commenced for the annual review of the performance measures, and parties have been negotiating new *xDSL loop* standards that could apply to all CLECs.² For service-provisioning Performance Measure 7, the benchmark standard agreed to by Pacific and AT&T requires ninety-five percent of installations for CLEC customers to be completed within the “Standard Interval,”³ which is currently ten days for lines needing conditioning and five days for lines not needing conditioning.⁴ Other CLECs have preferred to have a

² To begin settlement discussions, SBC Communications sent an e-mail notice to all parties pursuant to Rule 51.1 of the Commission’s Rules of Practice and Procedure on June 20, 2002.

³ The “Standard Interval” is defined as “The interval that the ILEC quotes to its customers with respect to how long it will take to provision a service request. These intervals are standardized by specific service type and type of service modification requested ILECs publish these standard intervals in documents used by their own service representatives as well as ordering instructions provided to CLECs. POTS services do not have standard intervals; their installation intervals are based on force available and workload. They may change as frequently as twice a day.” D.01-05-087, *JPSA Opinion*, Attachment C at 127.

⁴ “Conditioning” refers to preparation needed for some lines before they can carry *xDSL* services. The five- and ten-day intervals were established in Appendix DSL (“*Appendix DSL*”) to D.00-09-074, adopted September 21, 2000 in proceeding R.93-04-003/I.93-04-002, *Rulemaking on the Commission’s Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks / Investigation on the Commission’s Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks*. (See Appendix DSL, sections 1.1 and 7.3.) Some CLECs may have agreements setting the

Footnote continued on next page

specific number of days stated instead of “Standard Interval,” such as “ninety-five percent of installations completed within five (or ten) days.”

Discussion

We appreciate Pacific’s and AT&T’s effort and cooperation to make unworkable sub-measure standards workable. The changes would be an unambiguous improvement to the *JPSA* and the PIP in that they would enable the inclusion of this DSL service in the PIP’s monitoring and enforcement mechanisms. However, the advice letter process is not appropriate for modifying elements of Commission decisions unless the Commission has explicitly arranged for specific modifications to be made through this process.

To the contrary, we have required parties to file motions to amend the PIP.

Modification Clarifying Implementation Details of the Performance Incentive Plan for Pacific Bell Company, D.02-06-006 at 4 and 7 (June 6, 2002). In spite of Pacific’s and AT&T’s characterization of these changes being “parallel” and “separate,” we find that the changes are essentially the same as if the *JPSA* itself was changed.⁵ The net effect is the same: the measurement and assessment of these *xDSL loop* OSS services would be changed. The net effect is to change the provisions of a Commission decision. These changes look and function like elements of the PIP by measuring monthly OSS performance as the PIP does; assessing that performance as the PIP does; and generating monthly incentive amounts as the

installation interval for both conditioned and non-conditioned installations at seven days. For these CLECs the Standard Interval is seven days.

⁵ Depending on performance outcomes, there could be minor differences in the incentive credit amounts generated under the advice letter proposal versus a changed PIP. In the advice letter proposal, the failure rates for *xDSL* sub-measures do not affect the incentive amount “multipliers” as they would if they were integrated in the plan.

PIP does. Additionally, for the PIP to function as designed, it is important for elements such as these xDSL loop performance sub-measures to be integrated in the plan. Parties should request such changes through a motion consistent with previous decisions. *Id.*; *Opinion Modifying Decision 01-05-087 to Update Performance Measures for the Performance Incentives Plan for Pacific Bell Telephone Company*, D.02-06-046 (June 27, 2002).

To prevent delay of these beneficial changes, we modify these *xDSL loop* standards on our own motion.⁶ We will be rendering a decision on Pacific's Section 271 application soon, and increasing competition from the CLECs in local exchange service is an important part of this process. Making these *xDSL loop* OSS performance measures workable is important for enabling local competition, and should not be unduly delayed.

We prefer that these standards be changed for all CLECs even though only AT&T has completed an agreement with Pacific. The only unsettled issue has been whether to implement the Standard Interval or the specific number of days as the standard for Performance Measure 7. We find no difference between these positions as the Commission has previously established the number of days for this Standard Interval, as discussed *supra*. (See Appendix DSL, sections 1.1 and 7.3, D.00-09-074 (September 21, 2000).) After being provided this information, the CLECs active in this proceeding have agreed to accept the term "Standard Interval."

⁶ Since Pacific filed the advice letter, the parties have agreed to reduce the percentage standard for Performance Measure 16 to eight percent from ten percent, as reflected in Appendix A.

AT&T's agreement with Pacific also contains a provision that in the event parity comparisons become possible, the converted standards shall revert to the original parity standards. Parity standards more closely follow the federal criteria for performance: "the BOC must provide access to competing carriers in 'substantially the same time and manner' as it provides to itself." See *Bell Atlantic New York Order*, 15 FCC Rcd at 3971 at ¶ 44 (December 21, 1999). We prefer parity standards where possible, and we concur with this provision.

Conclusion

For the foregoing reasons, we conclude that the proposed modifications to the *JPSA* are reasonable and in the public interest. Accordingly, we approve the modifications as listed in Appendix A.

Comments on Draft Decision

The draft decision of ALJ Jacqueline Reed in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure.

Findings of Fact

1. Pacific and the CLECs active in this proceeding have agreed that the changes to Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 23 as listed in Appendix A to this decision should be made.
2. The changes to Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 23 as listed in Appendix A to this decision convert unworkable standards to reasonable workable standards.
3. There is no substantive difference between using the term "Standard Interval" versus a specific number of days.
4. The changes requested in Pacific's advice letter of May 31, 2002, are essentially the same as if the PIP itself was changed.

5. The changes requested in Pacific's advice letter of May 31, 2002, look and function like elements of the PIP by measuring monthly OSS performance as the PIP does; assessing that performance as the PIP does; and generating monthly incentive amounts as the PIP does.

6. The net effect of the changes requested in Pacific's advice letter of May 31, 2002, is essentially the same as if the PIP itself was changed.

7. The changes requested in Pacific's advice letter of May 31, 2002 effectively change the provisions of a Commission decision.

8. No party opposes these requested changes.

9. The requested changes correct measurement problems in the *JPSA*, and further the purposes of the PIP.

Conclusions of Law

1. The changes to Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 23 as listed in Appendix A to this decision further the purposes of the Commission's PIP.

2. The changes to Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 23 as listed in Appendix A to this decision are reasonable in light of the whole record, consistent with law, and in the public interest.

3. The Commission has established the number of days for the "Standard Interval" in D.00-09-074, Appendix DSL.

4. Making these *2-wire digital loop - xDSL capable* OSS performance measures workable is important for enabling local competition, and should not be delayed.

5. Elements such as the *2-wire digital loop - xDSL capable* performance sub-measures with workable standards should be integrated in the PIP.

6. Changes like those proposed in Pacific's May 31, 2002, advice letter should not be made through the advice letter process.

7. Parties should request changes like those proposed in Pacific's May 31, 2002, advice letter through a motion to modify the decisions which established the PIP or previously modified the PIP.

8. Performance incentives like those proposed in Pacific's May 31, 2002, advice letter should be integrated in the PIP.

9. So that these changes may take effect immediately, this decision should be effective today.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 01-05-087 shall be amended to change *2-wire digital loop - xDSL capable* sub-measure standards in Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 23 as documented in Appendix A to this decision, for all competitive local exchange carriers.

2. The Commission's Performance Incentives Plan set forth in D.02-03-023 shall use the amended D.01-05-087 performance measurements documented in Appendix A beginning with performance for the calendar month of September 2002.

3. In the event parity comparisons become possible for *2-wire digital loop - xDSL capable* service, the standards converted in this decision shall revert to the parity standards existing prior to this decision.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A

**New Performance Standards for
2-wire digital loop - xDSL capable Sub-measures in
Performance Measures 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 23**

Performance Measure	Standard
5 - % Orders Jeopardized	5%
7 - Average Completion Interval – Non-Conditioned	95% within Standard interval
7 - Average Completion Interval – Conditioned	95% within Standard interval
8 - % Completed within Standard Interval – Conditioned	95% within Standard Interval
8 - % Completed within Standard Interval – Non-Conditioned	95% within Standard Interval
11 - % Due Dates Missed	5%
12 - % Due Dates Missed (Lack of Facilities)	5%
13 – Delay Order Interval	Average - 14 calendar days
14 – Held Order Interval	Average - 14 calendar days
16 - % Troubles in 30 Days	8%
19 – Customer Trouble Report Rate	2%
20 - % of Customer Trouble Not Resolved within Estimated Time	Parity with Linesharing provided to ASI
21 – Average Time to Restore	Parity with Linesharing provided to ASI
23 – Frequency of Repeat Troubles in 30 Day Period	Parity with Linesharing provided to ASI

(END OF APPENDIX A)